

Message Text

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PAGE 01 GABORO 00510 231028Z
ACTION AF-10

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FM AMEMBASSY GABORONE
TO SECSTATE WASHDC 1654
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AMEMBASSY LUSAKA
AMEMBASSY MAPUTO
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E.O. 11652: N/A
TAGS: PINT CGEN MOPS RH SA BC
SUBJ: SOUTH AFRICAN "MERCENARY" FOUND GUILTY BY BOTSWANA COURT
REF: (A) STATE 28373, (B) GABORONE 0316

1. BERNARD BEYLEVELD WAS FOUND GUILTY OF TREASON AND SENTENCED TO FIFTEEN YEARS IMPRISONMENT BY JUSTICE J.B. EDWARDS IN BOTSWANA HIGH COURT IN LOBATSE ON FEB 17. IN PASSING SENTENCE JUSTICE EDWARDS NOTED THAT BECAUSE FIFTEEN YEARS WAS THE MINIMUM SENTENCE UNDER BOTSWANA LAW, IT WAS NOT POSSIBLE TO SUSPEND PART OF IT. THE JUSTICE SAID HE FOUND PROVEN THE DEFENDENT'S INTENTION TO GIVE ASSISTANCE TO THE RHODESIAN ARMY.

2. FINAL OUTCOME OF CASE WILL AWAIT BEYLEVELD'S APPEAL TO COURT OF APPEAL WHICH SITS IN LOBATSE TWO TIMES A YEAR AND IS COMPOSED OF FOUR OUTSIDE JUDGES, THREE FROM SOUTH AFRICA AND ONE FROM ZAMBIA. THE COURT LAST SAT IN NOVEMBER 1977 AND IS EXPECTED TO SIT AGAIN IN MAY 1978, IF NOT BEFORE. SHOULD BEYLEVELD'S APPEAL TO THE COURT FAIL, HE WILL MAKE A PLEA

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PAGE 02 GABORO 00510 231028Z

FOR CLEMENCY TO PRESIDENT KHAMA. ACCORDING TO FEB 21 PRESS RELEASE FROM THE OFFICE OF THE PRESIDENT, PRESIDENT KHAMA WOULD ONLY CONSIDER REPRESENTATIONS ON BEYLEVELD'S BEHALF IF HIS APPEAL TO THE COURT OF APPEAL IS NOT UPHELD.

3. COMMENT: EMBASSY WOULD POINT OUT THAT BEYLEVELD'S VERDICT IS PRODUCT OF IMPARTIAL SYSTEM OF DUE PROCESS OF LAW AND,

IN THIS CASE, WAS IMPOSED BY A WHITE JUSTICE. TOO, DEFENDENT'S SOUTH AFRICAN LAWYER WAS GIVEN COMPLETE FREEDOM OF ACTION TO INCLUDE CALLING ANY WITNESSES DEEMED NECESSARY FOR THE DEFENSE. SOUTH AFRICAN PRESS APPEARS TO HAVE HAD COMPLETE ACCESS TO DEFENDENT, WHO BY HIS OWN STATEMENT HAS BEEN WELL TREATED THROUGHOUT HIS INCARCERATION.

4. EMBASSY BELIEVES THAT CHIEF IMPLICATIONS WHICH TRIAL HAS FOR U.S. CITIZENS RECRUITED INTO RHODESIAN SECURITY FORCES IS WILLINGNESS OF COURT TO (1) ACCEPT STATE'S ASSUMPTION THAT RHODESIAN SECURITY FORCES CONSTITUTE A THREAT TO THE SECURITY OF BOTSWANA AND (2) IMPOSE STIFF SENTENCES FOR TREASON. AS NOTED REF B, BEYLEVELD CASE DOES NOT ADDRESS PROBLEM OF WHETHER RHODESIAN SECURITY FORCES DESERTER PEACEFULLY ENTERING BOTSWANA UNARMED WOULD BE SUBJECT TO SIMILAR PROSECUTION. ALTHOUGH THIS WILL HAVE TO BE TESTED IN THE EVENT, OUR ESTIMATE IS THAT THE GOB WOULD BE LENIENT TOWARD A "BONA FIDE" DESERTER, PREFERRING TO GET HIM OUT OF THE COUNTRY EXPEDITIOUSLY.

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